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No. 94-1544

SUPREME COURT, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1994

LEONORA SANIDAD, ET AL., PETITIONERS

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioners are citizens of the United States by virtue of their birth in the Philippine Islands at a time when they constituted a territory of the United States.

2. Whether Congress had the authority to classify citizens of the Philippine Islands as "nationals" but not citizens of the United States.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 31-68) is reported at 35 F.3d 1449. The opinion of the district court (Pet. App. 73-81) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 20, 1994. A petition for rehearing was denied on November 8, 1994. Pet. App. 71. The petition for a writ of certiorari was filed on February 6, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. At the close of the Spanish-American War on December 10, 1898, Spain ceded to the United States the Philippine Islands, Puerto Rico and Guam. See Treaty of Peace, Dec. 10, 1898, U.S.-Spain, arts. II, III, 30 Stat. 1755 (Treaty of Paris). Article IX of the Treaty provided that the inhabitants of the Philippines could remain subjects of Spain by making their intention to do so known within one year of the Treaty. 30 Stat. 1759. Otherwise, they were deemed "to have adopted the nationality of the territory in which they * * * reside[d]." *Ibid.* The Treaty declared that "[t]he civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress." *Ibid.*; see *Rabang* v. *Boyd*, 353 U.S. 427, 429 (1957). The Senate passed a virtually contemporaneous resolution that "by the ratification of the treaty of peace with Spain it is not intended to incorporate the inhabitants of the Philippine Islands into citizenship of the United States, nor is it intended to permanently annex said islands as an integral part of the territory of the United States." 32 Cong. Rec. 1846 (1899).

In 1902, after a period of military rule, Congress enacted the Philippine Government Act, ch. 1369, 32 Stat. 691. That Act provided, in pertinent part, that "inhabitants of the Philippine Islands" and their "children born subsequent" to April 11, 1899, were deemed "citizens of the Philippine Islands and as such [were] entitled to the protection of the United States." § 4, 32 Stat. 692. During that period, citizens of the Philippine Islands were commonly known as

"nationals" of the United States. Pet. App. 38 n.5; *Rabang* v. *Boyd*, 353 U.S. at 429-432.

In 1934, Congress adopted the Philippine Independence Act, ch. 84, 48 Stat. 456 (Independence Act), which provided for complete withdrawal of United States sovereignty ten years after the adoption of a Philippine constitution. § 10(a), 48 Stat. 463. The Independence Act also declared that for immigration purposes the Philippine Islands were to be "considered to be a foreign country" and its citizens were to be treated "as if they were aliens." § 8(a)(4) and (1), 48 Stat. 462. On July 4, 1946, the United States relinquished control over the Philippine Islands and declared them to be an independent sovereign, thus triggering a provision of the Independence Act that "the immigration laws of the United States * * * shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries." § 14, 48 Stat. 464; see *Rabang* v. *Boyd*, 353 U.S. at 429-430.

2. Petitioners, individuals born in the Philippines during the period of United States' control (or whose parents were born there during that period), brought declaratory judgment actions in the United States District Court for the District of Hawaii claiming that they are United States citizens by virtue of the Citizenship Clause in Section 1 of the Fourteenth Amendment. Pet. App. 37.[1] They argued that at the time that they (or their parents) were born, the Philippines were "in the United States" and thus that

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[1] The Citizenship Clause provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

they are constitutionally entitled to citizenship. *Ibid.* The district court dismissed petitioners' claims on the merits, stating that it was not willing "to rewrite the law on the citizenship status of people born in the Philippines and their children." Pet. App. 80.

3. The court of appeals affirmed. Pet. App. 31-68. The court held that petitioners' (or their parents') births in the Philippines during the period of the United States' control was not sufficient to qualify them for citizenship under the Citizenship Clause of the Fourteenth Amendment *Id.* at 38-40. The court noted that this Court, in *Downes* v. *Bidwell*, 182 U.S. 244 (1901), and its companion cases,[2] decided that the territorial scope of "the United States" as used in the Constitution is limited to the States of the Union and that it thus "does not include all territories subject to the jurisdiction of the United States government." Pet. App. 40. Judge Pregerson dissented. *Id.* at 43-68.

ARGUMENT

The court of appeals correctly held that persons born in the Philippines were not born "in the United States," and therefore did not acquire citizenship at birth under the Fourteenth Amendment. That ruling does not conflict with any decision of this Court or any other court of appeals. Further review is therefore not warranted.

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[2] *Downes* was one of a series of cases (collectively referred to as the *Insular Cases*) involving constitutional questions about newly acquired island territories. See also *De Lima* v. *Bidwell*, 182 U.S. 1 (1901); *Dooley* v. *United States*, 182 U.S. 222 (1901); *Armstrong* v. *United States*, 182 U.S. 243 (1901); *Hawaii* v. *Mankichi*, 190 U.S. 197 (1903); *Dorr* v. *United States*, 195 U.S. 138 (1904).

This Court recently denied a petition for a writ of certiorari in *Summerfield* v. *INS*, 115 S. Ct. 1427 (1995) (No. 94-1208), a case presenting identical legal claims that was consolidated with petitioners' case for argument in the court of appeals and was decided on the same day by that court. In light of the recent denial of review in *Summerfield*, the Court should also deny the petition in the instant case.

1. Petitioners' first contention (Pet. 21-22) is that they are United States citizens by operation of the Citizenship Clause of the Fourteenth Amendment, § 1, Cl. 1, which provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

As we explained in greater detail in our brief in opposition in *Summerfield*,[3] this Court has consistently rejected a reading of the term "United States" as used in the Constitution to include overseas territories that were acquired for a limited duration. See, *e.g.*, *Downes* v. *Bidwell*, 182 U.S. 244, 287 (1901) (opinion of Brown, J.); *id.* at 342 (White, J., concurring in the judgment); *Hooven & Allison Co.* v. *Evatt*, 324 U.S. 652, 673, 674 (1945) (Philippines "are territories belonging to, but not a part of, the Union of states under the Constitution," and for that reason imports "brought from the Philippines into the United States * * * are brought from territory, which is not a part of the United States, into the territory of the United States"); *Rabang* v. *Boyd*, 353 U.S. at 432 ("This Court has held that 'the power to acquire territory by treaty implies not only the

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[3] We have furnished counsel for petitioners with a copy of our brief in opposition in *Summerfield*.

power to govern such territory, but to prescribe upon what terms the United States will receive its inhabitants, and what their *status* shall be.'"); *id.* at 432 n.12 ("The inhabitants of the islands acquired by the United States during the late war with Spain, *not being citizens of the United States*, do not possess the right of free entry in the United States.") (emphasis added). Because the Philippines were never "in the United States," petitioners' citizenship was not governed by the Citizenship Clause, and petitioners were not citizens by birth. See *Rogers* v. *Bellei*, 401 U.S. 815, 827 (1971).[4]

2. Petitioners also err in contending (Pet. 22-26) that the United States was without authority to classify citizens of the Philippines as "nationals" but not citizens of the United States. The United States' power to define the status of inhabitants of the Philippines derived from three sources. Congress had authority under the Constitution to "make all needful Rules and Regulations respecting the Territory * * * belonging to the United States," Art. IV, § 3, Cl. 2, and "[t]o establish an uniform Rule of Naturalization," Art. I, § 8, Cl. 4. In addition, because the formal transfer of the Philippines to the United States was achieved through the Treaty of Paris, the United States' authority derived as well from Article II, § 2, Cl. 2 (the President "shall have Power, by and with the Advice and Consent of the Senate, to make

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[4] Petitioners suggest (Pet. 26-27) that the decision in *Downes* v. *Bidwell* was tainted by racial bias. This Court, however, has continued to rely on *Downes* v. *Bidwell* and the other *Insular Cases* in determining the constitutional rights of individuals outside the United States. See, *e.g.*, *United States* v. *Verdugo-Urquidez*, 494 U.S. 259, 268-269 (1990).

Treaties, provided two thirds of the Senators present concur"), as augmented by the Necessary and Proper Clause, Art. I, § 8, Cl. 18. These fonts of constitutional authority were sufficient to permit Congress to legislate with regard to a category of persons subject to, and protected by, the sovereignty of the United States, without making them citizens. Cf. *Kleindienst* v. *Mandel*, 408 U.S. 753, 765-766 (1972).[5]

The history of the Louisiana Territory referred to by petitioners (Pet. 22) provides a clear contrast. The treaty conveying that territory to the United States provided that "[t]he inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible * * * to the enjoyment of all the rights, advantages and immunities of citizens of the United States." Treaty of Apr. 30, 1803, U.S.-France, art. III, 8 Stat. 202. That language manifested an intent to incorporate the territory into the Union and expressly contemplated United States citizenship for its inhabitants. See *United States* v. *Percheman*, 32 U.S. (7 Pet.) 51, 68 (1833); *American Ins. Co.* v. *356 Bales of Cotton*, 26 U.S. (1 Pet.) 511, 542 (1828). In contrast, the Treaty of Paris and contemporaneous congressional actions evidenced an intent *not* to vest

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[5] Article IX of the Treaty of Paris provided that the inhabitants of the Philippines would adopt the "nationality of the territory in which they may reside" and that "[t]he civil rights and political status of the native inhabitants * * * shall be determined by the Congress." 30 Stat. 1759. Petitioners suggest (Pet. 24-25) that "political status" does not include citizenship status, but the equivalence of these terms is well established. See, *e.g.*, *Hidemitsu Toyota* v. *United States*, 268 U.S. 402, 411 (1925); *Balzac* v. *Porto Rico*, 258 U.S. 298, 302 n.1 (1922); *In re Heff*, 197 U.S. 488, 503 (1905).

citizens of the Philippines with United States citizenship or to admit the Philippines into the Union as a State. See *Balzac* v. *Porto Rico*, 258 U.S. 298, 308 (1922); *Fourteen Diamond Rings* v. *United States*, 183 U.S. 176, 179-180 (1901).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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